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Court : Chennai Madurai

Decided On : Jan-20-2017

Judge : B. Gokuldas

Appeal No. : CrI.R.C. (MD). No. 256 of 2008

Appellant : Jayakumar

Respondent : The State rep. by The Inspector of Police, Thanjavur South Police Station

Judgement :

(Prayer: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C. to set aside the conviction and sentence imposed in CrI.A.No.33 of 2007 on the file of the 1st Additional District and Sessions Judge (PCR Act Cases), Thanjavur in C.C.No.803 of 2004 on the file of the Judicial Magistrate Court No.I, Thanjavur and acquit the revision petitioner.)

1. This criminal revision case is filed against the judgment dated 16.02.2008, in Criminal Appeal No.33 of 2007 passed by the learned I Additional District and Sessions Judge (PCR Act Cases), Thanjavur, whereby the lower appellate Judge modified the judgment, dated 03.02.2007 in C.C.No.803 of 2004 passed by the learned Judicial Magistrate No.I, Thanjavur.

2. The case of the prosecution is as follows:-

PW-1 is the Headmaster of Allyya School and it was run by the trustees. In the Pari Educational Trust, A1 who was one of the Trustees, was the Chairperson. While so A1 had made certain corrections in the original Trust deed with regard to permanent trustees. On coming to know about these corrections, PW1 and PW2 questioned A1 about such corrections. A1 denied the same. Hence a dispute arose between them. Consequently, the accused persons attacked PW1 and PW2 with deadly weapons. A case was registered by the respondent police in Cr.No.129 of 2004 for the offences under Sections 324 and 506 (ii) of IPC against the accused persons numbering 4. The petitioner is arrayed as A4.

3. After investigation the respondent police filed a charge sheet against the accused persons under Sections 324, 326 and 506 (ii) IPC and the same was taken cognizance by the learned Judicial Magistrate No.I, Thanjavur in C.C.No.803 of 2004. On the side of the prosecution 11 witnesses were examined as PW-1 to PW-11 and 8 documents were marked as Ex.A-1 to Ex.A-8. On the side of the accused neither any witnesses was examined nor any document was marked. The trial Court after trial, vide judgment dated 03.02.2007 convicted the petitioner/A4 for the offence under Section 326 IPC and sentenced to undergo one year Rigorous Imprisonment and imposed a fine of Rs.500/-, in default to undergo 2 months simple imprisonment.

4. Aggrieved against the judgment of the Trial Court, the petitioner/A4 filed an appeal before the learned I Additional District and Sessions Judge (PCR Act Cases), Thanjavur, in CrI.A.No.33 of 2007, and the lower appellate Court vide judgment dated 16.02.2008, has modified the conviction and sentence on the petitioner/A4 to the effect that the petitioner was found guilty under Section 325 IPC and convicted under Section 325 IPC and sentence to undergo 4 months Rigorous Imprisonments with a fine of Rs.500/-, in default to undergo 2 months Simple Imprisonment. Challenging the judgment of the lower appellate Court, the petitioner/A4 is before this Court by way of this revision.

5. The learned counsel for the petitioner submitted that the Courts below did not appreciate the fact that the weapons alleged to have been used in the occurrence

have not been recovered by the Investigation Officer and there is no explanation for not recovering the same. He further submitted that PW11/Doctor was not examined by the Investigation Officer. Apart from that the medical evidence are not corroborating with the prosecution witnesses and there is no independent witnesses and all the prosecution witnesses are interested witnesses. Hence, the learned counsel for the petitioner prays to set aside the judgment of the lower appellate Court.

6. The learned Government Advocate (Criminal Side) submitted that appreciating the evidence adduced, the Courts below have rightly convicted and appropriately sentenced the petitioner/A4. Hence, the learned Government Advocate prays for dismissal of this revision.

7. I have carefully considered the rival submissions made by the learned counsel on either side and also perused the materials available on record.

8. Admittedly, the occurrence is stated to have been took place around 11 p.m. Naturally there is no possibility for any independent eyewitness at that time and moreover, PW1 and PW2 are injured witnesses. Therefore, their evidence cannot be brush aside simply because they are interested witnesses coupled with the timing of the occurrence. Hence, the contention of the learned counsel for the petitioner that there is no independent witnesses and all the prosecution witnesses are interested witnesses, cannot be countenanced. With regard to the contention of the learned counsel for the petitioner that alleged weapons have not been seized by the Investigation Officer, it is useful to extract the relevant portion of the impugned Judgment hereunder:-

20.

But at the same time the evidence of the PW1 to 5 clearly show the attack on the PW1 by the accused and the medical evidence also clearly show that there was a fracture on the left hand and laceration on the head. As discussed above PW4 has deposed that only stick was used by A4. Therefore in view of these discrepancies and coupled with the absence of evidence about the nature of weapon, it is save to hold that the prosecution has established the offence only under Section 325

IPC for causing grievous hurt voluntarily.

9. A bare reading of the above extract would go to show that the lower appellate Court has exhaustively analyzed the non seizure of alleged weapons used by the accused and also the medical evidence showing that there was a fracture on the left hand and laceration on the head, and come to the right conclusion that petitioner/A4 was found guilty under Section 325 IPC.

10. The other contention with regard to non examination of the doctor/PW11 also has no legs to stand since the Trial Court in its judgment has clear stated as follows:-

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11. In the result, the criminal revision fails and the same is dismissed as devoid of merits and the conviction imposed on the petitioner is confirmed. However, It is pertinent to point out that as per criminal jurisprudence, conviction and imposition of sentence are only reformative measure. The present criminal revision is pending from the year 2008 and now the age of the petitioner is 53 years. The co-accused have imposed the fine of Rs.2,000/- each and they have also paid the same. In the interest of justice, this Court while confirming the conviction, modified the sentence to the period already undergone by the petitioner and further imposed the fine of Rs.5000/- (Rupees five thousand only), in default, to undergo two months Simple Imprisonment. The fine amount is ordered to be paid to the victim under Section 357 Cr.P.C. as compensation.

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